

## Internal Revenue Service

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December 30, 2009

### Legend:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Newco =

Holdco =

Country A =

Business =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

Dear

This letter responds to your November 9, 2009 request for rulings as to the federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

### **Facts**

Parent is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated federal income tax return (the "Parent Group"). Parent also functions as a holding company for a worldwide group of corporations (the "Parent Worldwide Group"). The Worldwide Group is engaged in Business.

In relevant part, Parent indirectly owns all of the stock of Sub 5 through a chain of wholly-owned domestic subsidiaries comprised of Sub 1, Sub 2, Sub 3, and Sub 4. Sub 5 owned all of the issued and outstanding stock of Sub 6, a controlled foreign corporation within the meaning of §957.

Sub 6 had a shares of common stock issued and outstanding. Sub 5 acquired the shares of the Sub 6 stock at different times for different prices and could be traced to 8 different blocks, with Blocks 1 through 8 representing b percent, c percent, d percent, e percent, f percent, g percent, h percent, and i percent, respectively, of the total outstanding shares. Each block had been held by Sub 5 for more than 12 months.

Because Parent expected Sub 6 to continue to generate cash in excess of its business needs, Parent determined that it would be advantageous to transfer cash from Sub 6 to its shareholder, Sub 5, in order to meet future funding requirements of the Parent Worldwide Group. However, it was believed that Sub 6 did not have sufficient statutory distributable reserves required by the laws of Country A to distribute the full amount of funds desired by Parent. Accordingly, Parent has proposed the transaction described below (the "Proposed Transaction").

### **Proposed Transaction**

To achieve the business purpose described above, Parent has proposed the following steps, some of which have been completed:

- (i) Sub 5 formed Newco, a Country A company that is treated an association for federal income tax purposes pursuant to §301.7701-3.
- (ii) Sub 5 caused Sub 6 to merge with and into Newco, with Newco surviving. Newco did not issue shares in the merger, but immediately thereafter issued additional shares of Newco stock to Sub 5 such that Sub 5 owned a shares of Newco stock as a result of owning a shares of Sub 6 stock (Together, steps (i) and (ii) are referred to as the "First Reorganization"). The delayed stock issuance was required to conform to the laws of Country A.

- (iii) Holdco, a dormant entity treated as disregarded as separate from Sub 5 for federal income tax purposes, elected to be treated as a corporation for federal income tax purposes.
- (iv) Sub 5 transferred all of its shares of Newco stock to Holdco as a contribution to share premium. Holdco did not issue any shares in the transfer itself, but immediately thereafter issued additional shares of Holdco stock to Sub 5 such that Sub 5 owns a shares of Holdco stock as a result of owning a shares of Newco stock. The delayed stock issuance was required to conform to the laws of Country A.
- (v) Newco will elect to be treated as disregarded as separate from Holdco for federal income tax purposes under §§301.7701-2 and 301.7701-3, effective at least one day after Holdco acquires the shares of Newco (Steps (iii) through (v) are referred to as the “Second Reorganization” and together with the First Reorganization, the “Combined F Reorganization”).
- (vi) Sub 5 sold approximately j percent of the shares of Holdco stock to an unrelated third-party. Sub 5 intends to sell an additional k percent to a different unrelated third-party (Together with the sale of the j percent of Holdco stock, the “Stock Sale”). Sub 5 identified/will identify the shares sold as the successors to Block 4 and Block 6, and the shares representing such blocks were/will be assigned to the purchasers.
- (vii) Holdco redeemed approximately j percent of its outstanding shares from Sub 5 for fair market value in exchange for a Holdco note (the “Redemption”). Sub 5 identified the shares repurchased as the successor to Block 8 (and potentially certain other specifically identified shares), and such shares were cancelled or designated as treasury shares.
- (viii) Holdco made a pro rata distribution prior to year-end to its shareholders in the form of Holdco notes (the “Distribution”).

### **Representations**

The taxpayer has made the following representations in connection with the Proposed Transaction:

- (a) Sub 5 received solely Holdco stock in the Combined F Reorganization.
- (b) The fair market value of the Holdco stock received by Sub 5 in the Combined F Reorganization was approximately equal to the fair market value of the Sub 6 stock surrendered in the exchange.

- (c) Following the Combined F Reorganization, Sub 5 owned all of the outstanding Holdco stock and owned such stock solely by reason of its ownership of Sub 6 stock immediately prior to the Combined F Reorganization.
- (d) Immediately after the Combined F Reorganization, Holdco held (directly or through Newco) all the assets held by Sub 6 immediately prior to the Combined F Reorganization. The assets used to pay expenses were less than one percent of the fair market value of the net assets of Sub 6 immediately prior to the Combined F Reorganization. No assets were distributed in the Combined F Reorganization.
- (e) At the time of the Proposed Transaction, except in connection with the Stock Sale, Sub 6 had no outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 6.
- (f) With regard to the assets transferred from Sub 6 to Holdco in the Combined F Reorganization, the fair market value of the assets equaled or exceeded the sum of the liabilities (as determined under §357(d)) assumed by Holdco.
- (g) At all times after the effective date of the election to treat Holdco as a corporation for US federal income tax purposes and prior to acquiring the assets of Sub 6 in the Combined F Reorganization: (i) Holdco had not been engaged in any business activity; (ii) Holdco had no federal income tax attributes (attributes described in §381(c)); and (iii) Holdco held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying Holdco's incidental expenses or required in order to maintain Holdco's status as an entity in accordance with the laws of Country A).
- (h) All liabilities to which Sub 6 assets were subject at the time of the Combined F Reorganization, and all the liabilities of Sub 6 that were properly treated as being assumed by Holdco in the Combined F Reorganization (as determined under §357(d)), were liabilities that were incurred by Sub 6 in the ordinary course of its business and were associated with the assets transferred from Sub 6 to Holdco.
- (i) Newco was eligible to elect to be treated as a disregarded entity under §§301.7701-2 and 301.7701-3 and will make such election effective at least one day after Holdco acquires its shares.

- (j) Holdco was eligible to elect to be treated as an association under §301.7701-3, taxable as a corporation for federal income tax purposes, and will make such election effective prior to the date it acquired the stock of Newco.
- (k) Sub 5, Sub 6, and Holdco each paid its own expenses incurred in connection with the Combined F Reorganization.
- (l) Sub 6 was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).
- (m) Prior to the Combined F Reorganization, Sub 5 directly owned shares of Sub 6 stock from different lots (i.e., acquired on different dates and at different prices).
- (n) Following the Combined F Reorganization, Sub 5 directly owned shares of Holdco stock, each of which was a successor to a share of Sub 6 stock from different lots (i.e., acquired on different dates and at different prices).
- (o) In connection with the Stock Sale, Sub 5 designated/will designate in a written document the particular shares of Holdco stock sold as constituting Block 4 and Block 6. Corresponding entries were/will be made in the shareholder registry.
- (p) Sub 5 identified/will identify the specific Holdco shares sold in the Stock Sale and exchanged in the Redemption in a manner provided in §1.1012-1(c)(3).
- (q) In connection with the Redemption, Sub 5 designated in a written document the particular shares of Holdco stock redeemed as constituting Block 8 (and potentially certain other shares). Corresponding entries were made in the shareholder registry.
- (r) Except pursuant to the Stock Sale and the Redemption, Sub 5 has no plan to dispose of any shares of Holdco stock.
- (s) There is no plan for Holdco to liquidate or to merge into any other corporation.
- (t) There is no plan for Holdco to issue any additional shares of its stock or to redeem any additional shares of its stock.
- (u) The Stock Sale constituted/will constitute a sale or exchange of a portion of the Holdco shares for purposes of §1001, and there was/is no applicable provision of law that required/would require Sub 5 to defer the recognition of any gain or loss realized with respect to such shares.

- (v) Immediately prior to the Combined F Reorganization, Sub 6 was a controlled foreign corporation, within the meaning of §957(a).
- (w) Immediately after the Combined F Reorganization, Holdco was a controlled foreign corporation, within the meaning of §957(a).
- (x) At all times before the Combined F Reorganization, Sub 6 was not a passive foreign investment company within the meaning of §1297(a).
- (y) Immediately after the Combined F Reorganization, Holdco was not a passive foreign investment company within the meaning of §1297(a).
- (z) Sub 5 was a §1248 shareholder (within the meaning of §1.367(b)-2(b)), with respect to Sub 6 immediately before the Combined F Reorganization, and with respect to Holdco immediately after the Combined F Reorganization.
- (aa) The Combined F Reorganization was not an exchange described in §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (bb) The notice requirements of § 1.367(b)-1(c)(1) will be satisfied for the Combined F Reorganization.
- (cc) Parent will comply with the requirements of § 1.367(b)-4(d) with respect to subsequent exchanges of Holdco stock received in the Combined F Reorganization.
- (dd) Sub 6 did not hold any United States real property interests, as defined in §897(c)(1), immediately before the Combined F Reorganization, and Holdco did not hold and such interests immediately after the Combined F Reorganization.
- (ee) With respect to any existing gain recognition agreement entered into by Sub 5 in connection with a prior transfer by Sub 5 of stock or securities to Sub 6, Sub 5 will, in accordance with § 1.367(a)-8(k)(6)(ii), enter into a new gain recognition agreement as described in § 1.367(a)-8(c)(5) that designates Holdco as the transferee foreign corporation for purposes of § 1.367(a)-8, and will comply with the notification requirements thereunder.

### **Rulings**

Based solely on the information submitted, we rule as follows:

- (1) The Combined F Reorganization constitutes a reorganization within the meaning of §368(a)(1)(F). Sub 6 and Holdco will each be “a party to a reorganization” within the meaning of §368(b).
- (2) No gain or loss will be recognized by Sub 6 upon the deemed transfer of all of its assets to Holdco in exchange for Holdco stock and the assumption of liabilities (§§361(a) and 357(a)).
- (3) No gain or loss will be recognized by Holdco upon the receipt of the Sub 6 assets in exchange for the Holdco stock (§1032(a)).
- (4) Holdco’s basis in the assets acquired from Sub 6 will be the same as Sub 6’s basis in such assets immediately before the Combined F Reorganization (§362(b)).
- (5) Holdco’s holding period for the assets acquired from Sub 6 will include the period during which such assets were held by Sub 6 (§1223(2)).
- (6) No gain or loss will be recognized by Sub 6 on the distribution to Sub 5 of the Holdco stock (§361(c)(1)).
- (7) No gain or loss will be recognized by Sub 5, as shareholder of Sub 6, upon the receipt of the stock of Holdco in exchange for the stock of Sub 6 (§354(a)).
- (8) Sub 5’s basis in each share of Holdco stock received in exchange for Sub 6 stock will be equal to the basis of each share of Sub 6 stock treated as exchanged therefor (§358 and §1.358-2(a)(2)(i)).
- (9) The holding period for the Holdco stock in the hands of Sub 5 will include the period during which Sub 5 held the Sub 6 stock exchanged therefor, provided that the Sub 6 stock is held as a capital asset in the hands of Sub 5 on the date of the exchange (§1223(1)).
- (10) As provided by §381(a), Holdco will succeed to the tax attributes of Sub 6 enumerated in §381(c)).
- (11) Pursuant to §1001, Sub 5 will recognize any gain or loss realized with respect to the Holdco shares sold in the Stock Sale equal to the difference between the amount realized and its basis in the Holdco shares sold.
- (12) The Redemption will be treated as a distribution of property to which §301 applies pursuant to §302(d), and will be treated as separate from the Distribution (§1.301-1(l)).



- (13) The Distribution will be treated as a dividend to the extent of Holdco's current and accumulated earnings and profits (§301(c)(1)). To the extent the amount of the Distribution exceeds such earnings and profits, the amount received by a Holdco shareholder in the Distribution on each share of Holdco stock will be applied against and reduce a Holdco shareholder's basis in such share under §301(c)(2), and the remaining portion of the Distribution, if any, with respect to such share will be treated as a gain from the sale or exchange of property pursuant to §301(c)(3).

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular we express no opinion regarding the following:

- (i) With respect to the Redemption, the method under which Sub 5 recovers basis under §301(c)(2) or the treatment of any unrecovered basis pursuant to §1.302-2(c);
- (ii) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which §367(a) or (b) apply;
- (iii) To the extent not otherwise specifically ruled upon above, any other consequences under §367 with respect to any transaction described in this letter ruling;
- (iv) Whether any or all of the above-referenced foreign corporations are PFICs within the meaning of §1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of §§1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provisions of the Code.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated. Alternatively, taxpayers filing

their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Lewis K Brickates  
Chief, Branch 4  
Office of Associate Chief Counsel (Corporate)